

LABOUR DEPARTMENT

The 25th November, 1980

No. 11(112)-80-8Lab/12161.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s. Usha Spinning & Weaving Mills, Ltd., 12/1 Mathura Road, Faridabad :—

BEFORE SHRI M. C. BHARDWAJ,
PRESIDING OFFICER,
INDUSTRIAL TRIBUNAL,
HARYANA FARIDABAD.

Reference No. 108 of 1976

between

SHRI OM PARKASH SHARMA WORKMAN AND THE MANAGEMENT OF
M/S. USHA SPINNING & WEAVING
MILLS LIMITED 12/1 MATHURA
ROAD, FARIDABAD.

Present:

Shri S. R. Gupta, for the workman.
Shri R. C. Sharma, for the management.

AWARD

By order No. ID/FD/75/1320/21986, dated 25th June, 1976 the Governor of Haryana referred the following dispute between the management of M/s. Usha Spinning & Weaving Mills, Limited 12/1 Mathura Road, Faridabad and its workman Shri Om Parkash, to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

Whether the termination of services of Shri Om Parkash Sharma was justified and in order ? If not, to what relief is he entitled ?

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, following issues were framed on 1st December, 1976 :—

1. Whether the termination of services of Shri Om Parkash Sharma was justified and in order ? If not, to what relief is he entitled ?

2. Whether the reference is illegal and invalid on the ground that the State Government had previously decided not to refer the matter in question ?

And the case was fixed for the evidence of the management on the vires of the enquiry. They led evidence and so the workman. The enquiry proceedings and findings of the Enquiry Officer were held not in accordance with the law. The management was called upon to prove their case who examined Shri Hans Raj Supervisor as MW-1 and Shri Vinod Kumar Accounts Clerk as MW-2. The management also tendered in evidence certain documents and closed their case. Then the case was fixed for the evidence of the workman who examined himself as WW-1 and Mangaj Singh as WW-2 and closed his case. Arguments were heard. I now give my findings issue-wise :—

ISSUE NO. 2:

The management produced letters Exhibit M-I, M-J, M-K, M-L, M-M which were admitted by the workman. The representative for the workman agreed that the Government rejected demand of the workman concerned several times but ultimately it was referred for adjudication which is present reference. He cited AIR 1953 (S.C.) page 53 and 1970 II LLJ page 256 in which it is held that the Government has a power to refer the dispute at any time, even though it had decided earlier against such reference. Therefore, this issue is decided against the management.

ISSUE NO. 1:

MW-1 stated that the incident relates to August 1974. His duty was from 7.00 a.m. to 3.00 p.m. but he reached the factory at 6.20 a.m. Shri Om Parkash was not there. In cross-examination he stated that the workman generally remain in their department in duty hours but they have to go out for taking tea or smoking. MW-2 stated that Shri Om Parkash workman and the witness resided in the colony of the Mills. There was a small gate 3' by 6' separating the factory from colony. A chowkidar remains at this gate. His quarter is situated at a distance of 7-8 feet from the gate. In August 1974 at about 6.00 a.m. while he

was sleeping on the roof he heard a noise. There was quarrel of Shri Om Parkash and Shri Mangaj Singh Chowkidar. In cross-examination he stated that near the colony there were some crashes on the hill. They run day and night and gave dust. He denied that due to that dust nobody sleeps on the roof. He did not see assaulting any body. But only heard a noise. He did not go on the spot. He could not tell what words were exchanged by them.

WW-1 stated that he was working in the company since 1963. There was no complaint regarding his work till 1974. The management issued him a false charge-sheet Exhibit M-3 which was replied by him,—*vide* M-6. Charge-sheet was due to his union activities. He admitted that there was a civil litigation regarding his house which he left ultimately. In cross-examination he admitted that there was an enquiry by the management on the report of Shri Mangaj Singh. The management had asked to vacate the house after his dismissal and did not allow 15 days time so he went to the Civil Court. WW-2 Shri Mangaj Singh stated that he was in the employment of the respondent in the year 1974. He knew the concerned workman. There was no quarrel between him and the workman at the gate. He could not admit the signatures on Exhibit M-5 because the matter related back to six years. In cross-examination he admitted that he appeared in the enquiry in which Shri Shukla and Shri Om Parkash were present but he had complained that statement in the enquiry was not correctly recorded. He denied his signatures on Exhibit M-16.

I have gone through the file and find that the case was initiated by the management on alleged manhandling the watchman Shri Mangaj Singh by the concerned workman. In the statement of MW-1 and MW-2 produced by the management this fact does not find place. Moreover Shri Mangaj Singh has appeared as WW-2 and denied the allegations put forth by the management. As regards the statement of this witness during the enquiry order dated 7th April, 1978 of my predecessor is a detailed one. In that statement also this witness did not attribute any assault or overact to him.

Therefore, the management has utterly failed to bring home guilt of this workman. Therefore, this issue is decided against the management.

Relief:

This case pertains to the year 1974. It was rejected by the Government several times, in making reference for adjudication. The representative for the workman argued that there was no fault of the workman concerned for the delay, hence in case of reinstatement he should get full back wages. On the other hand I find the management equally not responsible for the delay. It will be unjustifiable to burden them with full costs of the period. Therefore, I hold that payment of half wages from the date of termination in addition to other benefits admissible to him will meet the ends of justice. However, he will be entitled to full wages from the date of notification of this award.

While answering the reference, I give my award that the workman is entitled to reinstatement with the rate of wages mentioned above. I order accordingly.
The 29th October, 1980.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal,
Haryana Faridabad.

No. 996, dated the 31st October, 1980.
Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal,
Haryana Faridabad.

No. 11((112)-80-8Lab/12169.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management

of M/s. Sidana Engineering Works Sector 24, Faridabad:—

**BEFORE SHRI M. C. BHARDWAJ,
PRESIDING OFFICER,
INDUSTRIAL TRIBUNAL,
HARYANA FARIDABAD.**

Reference No. 577 of 1978

between

**SHRI HIRA LAL GUPTA, WORKMAN
AND THE MANAGEMENT OF M/S.
SIDANA ENGINEERING WORKS
SECTOR-24 FARIDABAD.**

Present:

Shri Bhim Singh Yadav, for the workman.

Shri R. C. Sharma, for the management.

AWARD

By order No. ID/FD/11/178-78/55011, dated 8th December, 1978, the Governor of Haryana referred the following dispute between the management of M/s. Sidana Engineering Works Sector-24 Faridabad and its workman Shri Hira Lal Gupta, to this Tribunal for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947:—

Whether the termination of services of Shri Hira Lal Gupta, was justified and in order ? If not, to what relief is he entitled ?

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, following issues were framed on 23rd May, 1979:—

1. Whether the workman was a probationer ?
2. Whether the termination of services of the workman was justified and in order ? If not, to what relief is he entitled ?

And the case was fixed for the evidence of the management. The management examined Shri Darshan Parkash partner as MW-1 and closed their case. Then the case was fixed for the evidence of the workman who examined Shri Ashok Kumar as WW-1 and himself as WW-2 and closed his case. Arguments were

heard. Now I give my findings issue-wise:—

ISSUE NO. 1:

MW-1 stated that the workman filled an application form M-1 on which order of appointment M-2 was passed. The order bears signatures of Shri Hira Lal concerned workman at point A and B. In cross-examination he stated that Exhibit M-1 was filled in by some clerk at the instance of the workman. Form was supplied by the management: WW-2 stated that he was not given any appointment letter but he had signed after 20-25 days of his joining from Exhibit M-1 and at point A and B appear his signatures. He signed when the form was blank. He was not appointed for a period of six months. In cross-examination he admitted the contents of Exhibit M-1 to be correct.

I have gone through Exhibit M-1 which is an application form printed in Hindi as well as in English. It bears the particulars of the workman concerned. The order of appointment states that the applicant is appointed as a Turner with effect from 1st November, 1977. The appointment is as probationer for six months which shall stand extended for four months in case he is not removed from service. The application form and the order of appointment bears the signatures of the workman in English. He has admitted his signatures. His version that the form was blank at the time of his signatures has no force. He should have not signed the same in that situation. He could also demand the order of appointment issued to him before joining. Therefore, it is held that he was a probationer.

ISSUE NO. 2:

MW-1 stated that as a partner of the firm he supervises the factory. There were 26-27 workmen in the factory. The workman concerned could not work as a Turner. He was tried but did not prove suitable, so his services were terminated.—vide Exhibit M-3. As the workman refused to receive termination letter so a copy was placed at the notice board and another sent to Labour Inspector. In cross-examination he stated that an increment of Rs. 10 was given to the

workman but the increment was given to all the workmen of the factory which is shown in chart Exhibit M-6. WW-1 stated that the workman concerned was doing the work of a Turner and the increment given to him was for good work. His services were terminated due to his union activities. In cross-examination he admitted increment to all the workmen according to M-6. He further admitted that he was not supervising the work of the concerned workman and that he was not holding any office of the union. WW-2 stated that his services were terminated from 6th August, 1978. He made a complaint to the Labour Inspector but the management did not turn up there so he served a demand notice. He was given increment after 5-6 months of his appointment for good work. He was never warned by the management. He had formed a union for protesting against the management. His services had been terminated due to union activities. In cross-examination he stated that he had worked in Laxmi Rattan Engg., Eicher Tractors, Hindustan Breweries before joining service of the respondent. According to the version of the workman in his claim statement he was a regular employee and he was given increment for his good work. The same is belied by Exhibit M-2 and M-6. As regards his contention that he was forming a trade union no proof of the same has been given by the workman, nor it is believable that a workman with a service of only about 10-11 months will engage himself in a formation or organisation of workmen into their union. According to the letter of appointment the workman was a probationer and was appointed for six months extendable by another four months on 1st November 1977. His services were terminated on 6th September, 1978 after the period mentioned in Exhibit M-2. The plea of the management that he was not found suitable for the job of a Turner, therefore, his services were dispensed with seems proper. This issue is decided accordingly.

In the circumstances, I give my award that the termination of services of the

workman was justified and in order. The workman is not entitled to any relief. The 28th October, 1980.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal,
Haryana Faridabad.

No. 986, dated the 29th October, 1980

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal,
Haryana Faridabad.

No. 11(112)-80-8Lab/12174-A.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workmen and the management of M/s. D.G.L. Pvt. Ltd., Faridabad:

BEFORE SHRI M. C. BHARDWAJ,
PRESIDING OFFICER,
INDUSTRIAL TRIBUNAL,
HARYANA FARIDABAD.

Reference No. 354 of 1978
between

THE WORKMEN AND THE MANAGEMENT OF M/S. D.G.L. PVT. LTD.,
FARIDABAD.

Present:

Shri K. L. Sharma, for the workmen
Shri Y. H. Diwan, for the management.

AWARD

By order No. ID/FD/92-78/38248, dated 18th August, 1978 the Governor of Haryana referred the following disputes between the management of M/s. D.G.L. Pvt. Ltd., Faridabad, and its workmen, to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of

sub-section (1) of section 10 of the Industrial Disputes Act, 1947:—

1. Whether the closure declared by the management on 12th May, 1978 is justified and in order ? If not, to what relief the workmen are entitled to ?
2. Whether the termination of services of Sarvshri Harbans Lal, Mohan Lal, Subhash Chander and K. K. Baijal is justified and in order ? If not, to what relief the workmen are entitled to ?

On receipt of the order of reference, notices were issued to the parties. The parties appeared. The workmen filed their claim statement but the management did not file any written statement even after repeated opportunities. Their case was closed and *ex parte* evidence of the workmen was recorded. On the last date of hearing the workmen or their representative was not present. The factory stands closed since long. Shri Mohan Lal workman appeared as WW-1 and stated that he was working in this concern with effect from 9th August, 1966 at Rs. 490/- P.M. His services were terminated on 10th May, 1978. Shri Subhash Chander workman appeared as WW-2 and stated that he was working since 7th November, 1970 at Rs. 468/- P.M. His services were terminated on 10th May, 1978. He further stated that the factory was closed with effect from 12th December, 1978. Sarvshri Harbans Lal and K. K. Baijal did not appear in witness-box. Hence Shri Harbans Lal and K. K. Baijal are not entitled to any relief.

Believing *ex parte* statements of Shri Mohan Lal and Subhash Chander both these workmen are entitled to reinstatement with all benefits of service up to the closure of the factory.

The 30th October, 1980.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal,
Haryana Faridabad.

No. 997, dated 31st October, 1980.

Forwarded (four copies) to the Secretary to Government Haryana Labour & Employment Departments Chandigarh as

required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal,
Haryana Faridabad.

No. 11(112)-80-8Lab/12036.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/s. Rubber Udyog Vikas Private Ltd., Sector 25, Ballabgarh.

BEFORE SHRI M. C. BHARDWAJ,
PRESIDING OFFICER,
INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD.

Reference No. 155 of 1979
between

SHRI RAM DHIRAJ SINGH YADAV,
WORKMAN AND THE MANAGEMENT
OF M/S. RUBBER UDYOG VIKAS
PRIVATE LIMITED, SECTOR-25
BALLABHGARH.

Present:

Shri P. K. De for the workman.
Shri R. C. Sharma for the management.

AWARD

By order No. ID/19-79/21974, dated 19th May, 1979, the Governor of Haryana referred the following dispute between the management of M/s. Rubber Udyog Vikas Private Limited, Sector-25 Ballabgarh and its workman Shri Ram Dhiraj Singh Yadav, to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947:—

Whether the termination of services of Shri Ram Dhiraj Singh Yadav was justified and in order ? If not, to what relief is he entitled ?

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties order of

reference was put under issue on 3rd December, 1979 and the case was fixed for the evidence of the management who examined Shri L. N. Yadav, Enquiry Officer as MW-1 and closed their case. Then the case was fixed for the evidence of the workman. The workman examined himself as his own witness as WW-1 and closed his case. Then the case was fixed for arguments. Arguments were heard. Now I give my findings on issue No. 1.

ISSUE NO. 1:

MW-1 stated that he was appointed as Enquiry Officer by the management,—vide Exhibit M-1 to enquire into the charges levelled,—vide Exhibit M-2. Enquiry papers were Exhibit M-3 to M-16. Enquiry proceeding was Exhibit M-17, running into eight pages. The finding of enquiry was Exhibit M-18. He also held other enquiry against this workman along with Shri Ram Chabilla workman. Charges were Exhibit M-20. Enquiry proceedings were Exhibit M-43 running into 35 pages and finding Exhibit M-44. Standing orders placed on the file by the management were Exhibit M-45. In cross-examination he stated that he did not send intimation of the enquiry to the workman himself. It was sent by the management. The proceedings were *ex parte*. MW-2 stated that on receipt of enquiry proceedings and findings he issued letter Exhibit MW-2/1 to the workman. A reply was received which was Exhibit MW-2/2. Letter Exhibit MW-2/3 was issued by him. After the receipt of proceeding and finding of the enquiry he issued letter Exhibit MW-2/4 to the workman and reply was received by him,—vide Exhibit MW-2/5. The workman was dismissed,—vide Exhibit MW-2/6. Dismissal letter was issued after considering previous record which was Exhibit MW-2/7 to MW-2/11. In cross-examination he stated Exhibit MW-2/1 and MW-2/3 bear his signatures. The workman concerned in his statement as WW-1 stated that he joined the factory on 13th June, 1978 as a pressman. He was President of the union named as Faridabad Kamgar Union. No charges were levelled against him. He did not organise any strike in the factory but posted a notice at the factory gate against

Industrial Relations Bill. He was called at one occasion for holding a domestic enquiry. But no enquiry took place. He sent letter Exhibit W-4 to W-11 to the Enquiry Officer. In cross-examination he admitted that Exhibit M-20 was received by him which was replied by him,—vide Exhibit M-24. He admitted the receipt of enquiry notice Exhibit M-19 and also letter Exhibit M-8. He admitted that he was present on the first day of enquiry and he signed the same. He denied that he voluntarily withdrew from the enquiry. He admitted receipt of Exhibit MW-2/7, MW-2/9. He further stated that he wanted to be represented in the enquiry by Shri Mohan Lal but Shri Mohan Lal was not a workman of his factory. He admitted that he received letters Exhibit W-4 to W-10 from the Enquiry Officer.

The representative of the workman argued that the workman was not allowed opportunity to participate in the enquiry. His name did not appear on the attendance sheet in the enquiry. Termination on the basis of such an enquiry was, therefore, illegal. He also argued that notice of enquiry was not given to the workman. The representative for the management argued that the workman was informed by the management of the charges and of the enquiry. The workman was present before the Enquiry Officer and he was informed of the next date. The workman appended his signatures in token of information of the next date. I have seen the signatures of the workman on Exhibit M-19. The workman has also admitted in his statement that he was present on the first date of enquiry but did not participate later on. He has also stated that he wanted to bring some outsider as his representative. This may be reason of the workman not participating in the enquiry. The workman has also admitted receipt of notice after enquiry and has also admitted replying the same. I have gone through the enquiry file which has been conducted on different dates. In the second enquiry, the other workman had fully participated.. The charges were of inciting workmen to go on strike illegally. The management has taken action on the basis of finding of the

Enquiry Officer. So much so second cause notice was also given to the workman.

In these circumstances, I find that the enquiry is proper and action has been taken according to the Standing Orders. Therefore, this issue is decided in favour of the management.

While answering the reference, I give my award that the termination of services of the workman concerned was justified and in order. The workman is not entitled to any relief.

The 22nd October, 1980.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal,
Haryana Faridabad.

No. 969, dated the 27th October, 1980.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal,
Haryana Faridabad.

No. 11(112)-80-8Lab/12044.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/s. Snowtemp Engineering Co. Ltd., Faridabad:—

BEFORE SHRI M. C. BHARDWAJ,
PRESIDING OFFICER,
INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD.

Reference No. 90 of 1977

between

THE WORKMEN AND THE
MANAGEMENT OF M/S. SNOWTEMP
ENGINEERING CO. LIMITED
FARIDABAD.

Present:

Shri S. R. Gupta, for the workmen.

Shri S. L. Gupta, for the management.

AWARD

By order No. ID/23760, dated the 20th June, 1977 the Governor of Haryana referred the following dispute between the management of M/s. Snowtemp Engineering Co. Ltd., Faridabad and its workmen to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub section (1) of section 10 of Industrial Disputes Act, 1947:—

1. Whether the workmen are entitled to any ad hoc increase in wages ? If so, with what details ?
2. Whether the workmen are entitled to the grant of bonus for the year 1975-76 ? If so, with what details ?

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. The management in their written statement averred that the demands forming part of the reference had been mutually settled in the presence of the Labour Officer-cum-Conciliation Officer Faridabad,—vide settlement dated 18th July, 1977. They produced the settlement along with the written statement. Therefore, following issue was framed on 3rd October, 1977:—

Whether the settlement marked A is legal, valid and fair and reasonable ?

And the case was fixed for the evidence of the management. The management produced Shri B. R. Nagia, Labour Officer-cum-Conciliation Officer Faridabad, as MW-1 and Shri R. S. Chauhan, Incharge Personnel Department of the management as MW-2 and closed their case. On behalf of the workman appeared Shri Hari Singh as WW-1, Shri Bishan Dass Assistant in the office of the Labour Commissioners Haryana Chandigarh as WW-2, Shri Dharamvir Singh workman as WW-3 and closed their case. The management further examined Shri R. C. Chauhan and the workmen Shri Mangru Parshad, President of the union. Arguments were heard. I now give my finding on the above issue:

MW-1 the Conciliation Officer stated that the settlement dated 18th July, 1977 was arrived at in his presence and it bears his signature. In cross-examination he stated that the demand notice dated 12th October, 1976 was from five workmen. He could not tell if there was power of authority in favour of these workmen from the union. He had sent a failure report. He further stated that he had power to get the demands settled even after sending failure report. He denied that the demands of settlement were not read out to the workmen. He also denied that it was told that bonus issue will be decided separately. MW-2 stated that the settlement bears the signatures of the office-bearers of the union whose names were intimated by the union. The management received a letter from the workmen threatening direct action. They went on strike on 11th July, 1977. The Conciliation Officer visited the factory and settlement was arrived at there. The witnesses also signed the settlement. WW-1 stated that his signature appear on the settlement. The contents of the settlement were not explained to the workmen. The settlement was signed by him in the capacity of workman and not office-bearer of the union. In cross-examination he stated that he was President of the union. The demand notice on the basis of which the settlement was arrived at bear his signature. He admitted that strike had taken place in the course of it the settlement was arrived at. He further stated that the management had been informed about the office-bearers of the union but could not tell whether Exhibit WW-2/3 is the same information. He admitted that he was a cashier of the union prior to election as President. He admitted that Anil Kumar Sharma was Vice-President of their union. Shri Raja Ram a Cashier and other office-bearers as shown in Exhibit MW-2/3 were correct. WW-2 stated that settlement dated 18th July, 1977 was received in the office of the Labour Commissioner Haryana along with covering letter from the Conciliation Officer. There was no authority letter with it. In cross-examination he stated that there was no failure report in the file. WW-3 stated that the settlement bears his signature.

There was no authority to sign the settlement. He was General Secretary of the union. In cross-examination he stated that he did not sign the settlement under protest. He admitted that the Conciliation Officer was present at the time of settlement but the contents were not read out. Shri R. S. Chauhan stated when recalled that the management had paid Rs. 10/- P.M. as *ad hoc* increase. All the workmen had received the payment. In cross-examination he stated that at that time minimum wages was paid at the rate of Rs. 170/- P.M. Shri Mangru Parshad stated that the union had raised the demand. At that time the workmen were paid between Rs. 173/- to Rs. 450/- P.M. No dearness allowance was paid. In cross-examined he stated that he was getting annual increments. In 1977 he got Rs. 10/- and in 1979 Rs. 20/-. Shri Hari Singh got annual increment of Rs. 10/- as per the settlement.

The representative for the workmen argued that this settlement was under section 12(3) of the Industrial Disputes Act which was arrived at in the presence of the Conciliation Officer and signed by him. The union had initiated to the management names of office-bearers who signed the settlement. The settlement had been acted upon. The witnesses of the workmen have admitted their signatures on the settlement. They were office-bearers of the union. The settlement does not suffer from any infirmity. It is a legal settlement. As regards the fairness of the settlement the representative for the workmen agreed that increase of Rs. 10/- was very low. This aspect should have been considered by the signatories of the settlement at the time of its execution. It depends upon the capacity of the the management as to how much amount they can pay to their workmen. The workmen have not produced any document to show how they were entitled to higher amount and the management had a capacity to meet that expenses.

In these circumstances, I feel the settlement is fair and give my award that

the workmen are therefore, not entitled to any further relief.

The 23rd October, 1980.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal,
Haryana, Faridabad.

No. 968, dated the 27th October, 1980.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal,
Haryana, Faridabad.

The 28th November, 1980

No. 11(112)-80-Lab./12348.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947, (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/s Precision Stampings Sector 24, Faridabad.

BEFORE SHRI M. C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 220 of 1979

between

SHRI RAJESHWAR PRASAD, WORKMAN AND THE MANAGEMENT OF M/S. PRECISION STAMPING SECTOR-24, FARIDABAD.
Present:

Shri Adarsh Kishore, for the workman.

Shri S. L. Gupta, for the management.

AWARD

By order No. ID/FD/109-79/34941, dated 9th August, 1979, the Governor of Haryana referred the following dispute between the management of M/s Precision Stampings Sector 24, Faridabad and

its workman Shri Rajeshwar Prasad, to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947:—

Whether the termination of services of Shri Rajeshwar Prasad was justified and in order ? If not, to what relief is he entitled ?

On receipt of the order reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties following issues were framed on 18th October, 1979:—

- (1) Whether the termination of services of the workman was justified and in order ?
- (2) Whether the reference is bad in law ?

And the case was fixed for the evidence of the management, who examined Shri S. K. Agrawal, their Manager as MW-1 and closed their case. Then the case was fixed for the evidence of the workman, who examined himself as his own witness and closed his case. Arguments were heard. I, now give my finding issue-wise :—

ISSUE NO. 2:

Issue No. 2 is whether reference is bad in law. Therefore, this issue is taken first. On this issue MW-1 stated that the workman had admitted his guilt and gave in writing Ex. M-1 in this behalf. Whereas the workman concerned has denied his signatures on Ex. M-1. The representative for the management argued that in the presence of admission of fault there should not have been the present reference. I do not find any merit in the argument of the representative of the management because the matter is still under controversy. Therefore, this issue is decided against the management.

ISSUE NO. 1 :

MW-1 stated that the workman was a helper but was working as Press

Operator on trial basis. On 26th April, 1979, the workman was detained after working of normal shift alongwith some other workman for working in the 2nd shift. He was asked to operate power press on which tool was loaded to punch thin sheet. The workman mischievously picked up some thick scrap piece and ran it on this tool knowingly. He further stated that he purposely damaged the tool. The company suffered a loss of Rs. 6,000 by breakage of six punches and also loss of production. The damage condition was seen next morning. The concerned workman was called for enquiry who admitted his guilt in writing which is Ex. M-1. Continuing his statement he further stated that from the next day onwards the workman stopped coming to the factory of his own. No information of the absence was sent by him. Chargesheet copy Ex. M-2 along-with letter Ex. M-3 by registered post Ex. M-4 was sent to him. The workman did not come for his duty. In cross examination he stated that there were 150 workmen in the factory. Certified Standing Orders were applicable. There was no report from the Supervisor of breaking of tool but the report was verbal. He did not go himself to the machine. There was a practice of seeking supervisor's report for issuing chargesheet. No letter was given to the workman for enquiry held on 27th April, 1979. Nor any letter was sent to him regarding his absence. He denied the suggestion that the chargesheet was fabricated. He admitted to be correct that no letter was issued to the workman for participating in the enquiry.

WW-1 stated that he was working as Press Operator for the last 2½ years. On 28th April, 1979, he was removed from the job without any reason. He served a demand notice Ex. M-1. The management did not appear in the conciliation proceedings. He did not receive any information regarding enquiry. In cross examination he stated that on 26th April, 1979, he was working on power press P.4 on which 7.3/8" rotar gang plating tool was fitted. He denied the suggestion that any tooth of machine was

broken in his duty. He also denied that he put scrap in the machine. He denied his signatures on Ex. M-1 but admitted his signatures on Ex. M-6. He further stated that Shri Agrawal had asked him to remain at the factory gate as he will talk to him later on. But he did not talk.

The representative for the management argued that the machine was damaged by the workman concerned and he was fully aware of the result of his action of putting a thick scrap into it. He cited 1977 (34) FLR page 261 and 1967 II LLJ page 739. The rulings cited by the representative for the management are not applicable because the case is not of continued absence or a domestic enquiry as stated in the rulings.

Ex. M-2 which was sent by the management C/o. Union office states that the workman was on duty from 9-00 p.m. to 12-30 a.m. In the next para it states that the machine could be run only for a few minutes in the next shift as the tool was producing defective components. On checking the tool it was found that six punches of the tool had been broken down and some thick scrap pieces were found inside the tool. It also mentions the admission of his fault by the workman. The letter is dated 19th May, 1979. From this letter the statement of MW-1 is believed in which he has stated that the workman mischievously picked up some-thick scrap and put in the machine. According to M-3 the workman completed his 2nd shift. There is no evidence that the components manufactured in his duty were defective. There is also no evidence to the effect that the Operator in the day shift examined the machine before its operation. Defect came to his notice only after running for a few minutes. The management has also not given any reason or motive of breaking the machine by the workman who had been put as a Machine Operator on trial basis while he was only a helper. He should have been grateful to the management. Moreover the management had reposed confidence in him to work over time in full one shift as a Machine Operator. As regards Ex.

M-1 the management requested for obtaining specimen signatures of the workman after his denial of signing Ex. M-1 but the management failed to examine any expert witness for comparing his specimen signatures. The workman has put in 2½ years of service. The case of the management hinges only on Ex. M-1 which has not been proved as aforesaid. It would have been proper had the management held a proper domestic enquiry to bring home guilt of the concerned workman if any.

In these circumstances, I set aside the termination of the workman which is unjustified and not in order.

While answering the reference, I give my award that the termination of services of the workman was neither justified nor in order. The workman Shri Rajeshwar Prasad is entitled to reinstatement with continuity of service and with full back wages. I order accordingly.

Dated the 5th November, 1980.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endorsement No. 1027, dated 6th November, 1980.

Forwarded, (four copies), to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

The 9th December, 1980.

No. 11(112)-80/8Lab./13008.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947, (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court,

Faridabad in respect of the dispute between the workmen and the management of M/s Goel Industrial Corporation 14/5, Mathura Road, Faridabad.

IN THE COURT OF SHRI
ISHWAR PRASAD CHAUDHRY,
PRESIDING OFFICER, LABOUR
CORUT, HARYANA, FARIDABAD.

Reference No. 54 of 1979

between

SHRI HEMA CHAUHAN, WORKMAN
AND THE MANAGEMENT OF M/S
GOYAL INDUSTRIAL CORPORATION
14/5, MATHURA ROAD,
FARIDABAD.

Present:

Shri R. N. Roy, for the workman.

Shri R. C. Sharma, for the respondent management.

AWARD

This reference No. 54 of 1979 has been referred to this Court by the Hon'ble Governor of Haryana,—vide his order No. ID/FD/181-79/51746, dated 7th December, 1979, under section 10(1)(c) of the Industrial Disputes Act, 1947, for adjudication of the dispute existing between Shri Hema Chauhan, workman and the management of M/s Goyal Industrial Corporation, 14/5, Mathura Road, Faridabad. The term of the reference was:—

Whether the termination of services of Shri Hema Chauhan was justified and in order ? If not to what relief is he entitled ?

After receiving this reference notices were issued to both the parties, who appeared and filed their pleadings. On the pleadings of the parties, following issues were framed by my predecessor:—

- (1) Whether this present reference is not an Industrial Dispute under section 2K of the Industrial Disputes Act ?
- (2) Whether this court can hold a fresh enquiry against the workman on the charges levelled against the workman before his termination.

- (3) Whether the termination of services of the workman is justified and in order ? If not to what relief he is entitled ?
- (4) Whether the domestic enquiry held by the management against this workman was proper fair and according to the principle of natural justice?

Out of which Issue No. 4 was ordered to be treated as preliminary issue by him. Both the parties lead their evidence and argued their case.

The workman was chargesheeted for certain actions of misconduct and a domestic enquiry was ordered to be held into the charges. The workman requested that he be allowed to bring Shri Hoob Lal Yadav, General Secretary of the Mercantile Employees Association to assist him in the domestic enquiry which request was granted by the enquiry officer.

The workman Shri Hema Chauhan along with his representative participated in the enquiry throughout and signed each page of enquiry proceeding in token of their being present and the enquiry being correctly recorded. The workman received copies of the proceedings of the enquiry.

The management to prove their case has examined Shri K. C. Jain its manager, Shri Sajit Sen Gupta, Supervisor, whereas the workman appeared as his own witness and closed his case.

The findings of the enquiry officer are Ex. M-5 where in the enquiry officer has held this workman guilty of the charges levelled against him.

A perusal of the enquiry record reveals that the workman was offered all opportunities and facilities to defend himself which he actually availed of fully.

The findings of the enquiry officer are based on the record of enquiry Ex. M-5 and I find no reason to differ with the same.

The enquiry is fair and proper and held in accordance of principles of natural justice.

There are in fact 3 charges against this workman. (1) Slow down production, (2) To refuse to work on D.D. saw machine and of using threatening language against his supervisor and (3) Misbehaviour and altercation with the manager of the respondent company.

To prove the three charges the management produced S/Shri K. C. Jain its manager Sajit Sen Gupta, Supervisor as MW-1 and MW-2 in the domestic enquiry. MW-1 Shri Jain relates that the workman Hema Chauhan came to him with a request that his pay be raised. As Shri Jain told him that his pay could not be raised he started resorting to go slow. This witness in enquiry stated that when his supervisor asked Shri Hema to work on D.D. Saw machine, as there was no work for bend saw machine this worker not only refused to work on that machine rather misbehaved with him. This witness further stated in enquiry that on 8th June, 1979, he called Shri Hema Chauhan, workman in his office, made him see reason, but instead this workman is stated to have, replied that he would not work. This contention of Shri Jain is supported by the testimony of Shri Sajit Sen Gupta, the Supervisor of respondent Company. It is also on record that this workman had been working before, on D.D. Saw machine, also.

In his rebuttal the workman has stated that he refused to work on D.D. Saw machine as he had never worked on that and had never used derogatory, abusing and threatening language to Mr. Jain or Shri Sajit Sen Gupta.

However, this argument did not find favour with the enquiry officer and relying on the evidence of the management, found him guilty of the charges.

Shri R. N. Roy learned representative of the workmen has attacked the enquiry only on a solitary ground that the finding of the Enquiry Officer is perverse. Doing so has relied upon the judgement of Hon'ble Supreme Court in the case of Indian Iron and Steel Co. versus workmen cited as 1958-I.L.J Volume I page 260 where in their Lordships were pleased to

hold at page No. 270 as "In cases of dismissed and misconduct the tribunal does not however, act as a court of appeal and substitute its own judgement for that of the management. It will interfere 2, 3, 4, 9. As far as the enquiry findings are concerned these are not at all based on No evidence. There is evidence in support of the finding and it is not my jurisdiction in such matters to substitute my findings with the findings of the enquiry officer. If the findings are based on no evidence then the findings are perverse, but in this case, as the findings are based on evidence, they cannot be called as perverse. The case of Indian Express and Chronical Press *versus* M. C. Kapur 1974 ILJ Volume II (S.C.) is distinguishable on the facts of this case.

I have already held the enquiry to be fair and proper by holding the finding of the enquiry officer as not perverse. I decide this issue in favour of the management and against the workman.

ISSUE NOS. 1 AND 2:

In view of my findings on issue No. 4 (Preliminary issue) I do not feel any necessity to discuss these.

ISSUE NO. 3:

In view of my findings on issue No. 4 above. I decide this issue in favour of the management and against the workman Hema Chauhan.

In view of my discussions above, I hold that the termination of services of Shri Hema Chauhan workman as justified and in order and that the workman is not entitled to any relief.

This be read in answer of the above reference.

No order as to costs.

Dated the 4th November, 1980.

ISHWAR PRASAD CHAUDHRY,
Presiding Officer,
Labour Court, Haryana, Faridabad.

Endorsement No. 2146, dated 21st November, 1980.

Forwarded. (for copies), to the Secretary, to Government, Haryana, Labour

and Employment Department, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

ISHWAR PRASAD CHAUDHRY,
Presiding Officer,
Labour Court, Haryana, Faridabad.

No. 11(112)-80-8Lab./13072.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/s Khanna Tailors, Faridabad.

BEFORE SHRI M. C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD.

Reference Nos. 14 to 24 of 1976
between

S/SHRI LAL SINGH, SHIV SINGH, KISHAN SINGH, CHHOTE LAL, BASU DEV, FAROOK, KUMAR PAL, NETAR PAL, RAM SARUP, PHOOL CHAND, SARTAJ AHMED KHAN, WORKMEN AND THE MANAGEMENT OF M/S KHANNA TAILORS, FARIDABAD.

Present :

Shri N. E. Kumbhare/Shri R. N. Roy, for the workmen.

Shri R. C. Sharma, for the management.

AWARD

This judgement will dispose of this and the connected references Nos. 14 to 24 of 1976, which have been consolidated on the request of the parties to avoid duplication of work, there being some common points of law and fact involved in all the cases.

On receipt of the failure report from the Conciliation Officer in each case, the disputes were referred for adjudication to this Tribunal in exercise of the powers conferred by clause (d) of sub section (1) of section 10 of the Industrial Disputes Act, 1947, the term of reference in each case being the same:—

Whether the termination of services of the workmen concerned was justified and in order ?

If not, to what relief is he entitled ?

On receipt of the order of references, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, following issues were framed on 12th May, 1976:—

- (1) Whether the claimants were employed as workmen with the management ?
- (2) If yes, whether the references are bad in law and are otherwise barred for the reasons as stated by the management in the preliminary objections ?
- (3) Whether each one of the claimants absented himself from duty with effect from 22nd February, 1974, voluntarily and of his own accord without obtaining permission of the management ?
- (4) If not, whether the termination of the services of the workmen by the management was justified and in order ? If not, to what relief are they entitled ?
- (5) Whether the provisions of the Industrial Disputes Act are not applicable to the facts of the case ?

References Nos. 14 to 24 of 1976 being consolidated proceedings were recorded in reference No. 14 of 1976, and the case was fixed for the evidence of the workmen on issue No. 1. The workmen examined Shri Lal Singh as WW-1 and closed their case on issue No. 1 and then the case was fixed for the evidence of the management, who examined Shri Mehar Chand as WW-1 and Shri Om Parkash as WW-2 and closed their case on all the issues. The workmen were given opportunity to advance their evidence on other issues who examined themselves as WW-2 to WW-8 and closed their case. Now I give my finding issueswise. Arguments were heard.

ISSUE NO. 1:

Briefly stated the facts of the case are that the workmen were piece rated employees in the tailoring shop of M/s. Khanna Tailors, Faridabad. According to them they raised demand for increase in their wages. Annoyed over their action the management refused them work. The dispute was referred to this Tribunal in the year 1974, which were decided,—vide award dated 29th May, 1975. In that award present claimants were held to be workmen as defined under section 2(s) of the Industrial Disputes Act. But the main demand was not gone into because the case was rejected on the issue of giving of notice of demand to the management. The finding in that award were not challenged by the parties. The workmen raised another demand on the management, hence the present reference. Because the parties did not assail the previous finding and they have conceded the same, therefore, I hold issue No. 1 in favour of the workmen.

All the other issues are intermingled therefore, they are taken together.

ISSUES NO. 2 TO 5:

WW-1 stated that he was working with the management for the last 10-12 years. There was no fixed timings of their work. No application for leave was necessary. The workmen noted their work in their diary and received payment at the end of the week at piece rate. Rate or remuneration was based on stitching of different kind of clothings and it depends on the quality of cloth and workmanship. There was strike by the tailors working at the shop on 2nd February, 1974. The concerned workmen were working in other shops or they have been running their own shops. WW-2 stated that he was partner of the management. Clothings were given to the workmen after being cut per size of the customers for stitching purposes. They were advised regarding design etc. Record of stitching was done in a diary kept by the workman. The customers generally took trial and in case of some defect clothing was given to the concerned workman for

removing that defect. In February, 1974 a defect in stitching was noticed for three times. The concerned workman was asked to remove that defect all the times. All the workmen united and struck work. They had not been asked to go out. Their shop was remained closed for 1½ months. They were not their employees. They picked up quarrel with the management and case under section 506/323, 148, 149 I.P.C. was registered copy of which was Ex. M-6. Some of the workmen namely S/Shri Ram Sarup, Kartar, Chhote Lal and Kishan had started their own business while others were working with Verma Tailors. They could do stitching work even in their own houses. He further stated that they never refused work to them. In cross examination he stated that proceedings on Ex. M-6 were pending in the court against the management. Workers used to work generally in the shop but some times in their own houses. Sewing Machines belong to the management. Rates were settled orally. Their shop was registered under the Shops Act. No attendance register was maintained. He denied the suggestion that he deposed falsely. He further stated that the management did not refuse work to the workers and they were still ready to provide them work on the previous terms.

WW-1 stated that he was in service of M/s Khanna Tailors from 1963. He was paid at piece rate basis. His services were terminated on 22nd February, 1974. Other workers were also piece raters receiving wages on the quantum of work done. Attendance register and Payment of Wages Register was maintained by the management. The management supplied them cloth already cut by an Expert. Duty hours were from 8-00 A.M. to 5-00 P.M. Work was given at the discretion of the management. In cross examination he stated that no appointment letter or attendance card was given by the management. Each of the workmen could earn Rs. 600 p.m. They worked on Sundays also. They got published and circulated pamphlet Ex. W-2. He did not go on strike. WW-1 Shri Lal Singh was

recalled and stated that no chargesheet was given to him. The management terminated his services. He did not go on strike. The dispute was that the management got defect removed from them whenever customers returned clothings which had been previously stitched by a workman. This was not the business of the workmen. In further cross examination he stated that he had no proof of his service. Ex. M-1 was signed by him. He admitted that he was leader of the claimants and Ex. M-1 was typed at his instance. He admitted Ex. M-2. But he denied lodging of police report against the management. He denied that he worked with Bhim Singh Verma but he admitted that Kishan, Chhote and Shiv Singh worked there for 2-3 days. He further stated that he stitched shirt, Paijama underwear and some times pants. He further stated that the management did not give them charges of alteration. Shri Chhote Lal, Sartaj Ahmed Khan, Kishan Chand, Shiv Singh, Kumar Pal, Ram Sarup corroborated the story given by WW-1.

The representative for the management argued that it was a tailor shop employing only 10 persons and registered under the Shops Act. Dispute between the parties had been adjudicated and award was given by the Tribunal. The same demands could not be agitated again, therefore, the reference was bad in law. On the other hand the representative for the workmen argued that the previous reference was not decided on merits rather it was dismissed on some technical grounds. Demand was still subsisting, therefore, the Government was competent to refer the dispute for adjudication. He cited 1970 I LLJ page 1 and 1970 II LLJ page 256. This argument has force, therefore, I hold the reference as valid.

The representative for the management argued that the workmen who were piece rated employees absented themselves and resorted to strike on their unjustified plea of not doing alteration work which was a part of contract. He referred to evidence led by the parties in this

behalf. He also argued that the Industrial Disputes Act was not applicable to the present case because it was registered under the Shops and Commercial Establishment Act. He further argued that there were no fixed wages of the workmen and they were Master of their will to do their work. The management never refused them work rather on the other hand they put the management under loss by striking work. He also referred to Ex. M-2 and M-6 to show the behaviour of the concerned workmen. He argued that Netra Paul, Basu Dev, Farook and Phool Chand who did not appear to prove their case were not entitled to any relief in case it is allowed by the Tribunal.

On the other hand the representative for the workmen argued that the management terminated the services of the workmen and it was not a case of abandonment on their part. He admitted that the workmen were piece rated employees and such remuneration fell under the definition of wages as defined in section 2(rr). The dispute was governed by the Industrial Dispute Act and there was no effect of Shops Act in such cases.

I have considered the arguments of the learned representatives of the parties and records of the case. The workmen no doubt were piece rate employees doing their work according to their need and will. There was no fixed wages of each of the workmen, nor there was fixed duty hours. It is within the common knowledge that stitching of cloth is done according to the requirement of the customers and alterations are carried out after trial of the clothing. There is no written contract between the parties to show the binding nature of work of the claimants. However, both the parties could not settle the dispute amicably. The management on the one hand stated that they never refused work and also that the workmen were doing their own business. On the other hand the workmen have pleaded that they were harassed by the management and have remained out of job. I feel that it is not difficult to get such a job in the market. Considering

the circumstances and nature of the case I decided that S/Shri Lal Singh, Shiv Singh, Kishan Singh, Chhote Lal, Kumar Pal, Sartaj Ahmed Khan, Ram Sarup are entitled to their previous job. As regards their wages, I find that the litigation started in 1974, though the present references were made in the year 1976. There were no fixed wages as discussed above.

In these circumstances, there is no order of back wages, however, the workmen S/Shri Lal Singh, Shiv Singh, Kishan Singh, Chhote Lal, Kumar Pal, Ram Sarup, Sartaj Ahmed Khan will be entitled to their previous job and a compensation of Rs. 1,000 each. I order accordingly and answer the reference in these terms.

Dated the 26th November, 1980.

M. C. BHARDWAJ,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endorsement No. 1065, dated 27th November, 1980.

Forwarded (four copies), to the Secretary, to Government, Haryana Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

The 19th December, 1980

No. 11(112)-80-8Lab/13285.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workmen and the management

of M/s. Colts Engineering Industries, Plot No. 101, Sector 6, Faridabad.

BEFORE SHRI M. C. BHARDWAJ,
PRESIDING OFFICER,
INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD
Reference No. 136 of 1976

between

SHRI BRAJ NATH SINGH WORKMAN
AND THE MANAGEMENT OF M/s.
COLTS ENGINEERING INDUSTRIES,
PLOT NO 101, SECTOR-6, FARIDABAD

Present:—

Shri R. C. Sharma, for the workman.

Shri H. R. Dua, for the management.

AWARD

By order No. ID/FD/794-A-96/247745, dated 22nd July, 1976 the Governor of Haryana referred the following dispute between the management of M/s. Colts Engineering Industries, Plot No. 101, Sector-6, Faridabad, and its workman Shri Braj Nath Singh to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947:—

Whether the termination of service of Shri Braj Nath Singh was justified and in order ? If not, to what relief he is entitled ?

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, following issues were framed on 6th July, 1977:—

1. Whether the workman concerned was an employee of the management ?
2. Whether the termination of services of Shri Braj Nath Singh was justified and in order ? If not, to what relief is he entitled ?

And the case was fixed for the evidence of the workman, who examined Shri Bhola Nath clerk as WW-1, Shri Gobro as WW-2, Shri Vidya Sagar as WW-3, Shri V. P. Bahal as WW-4 and himself as WW-5 and closed his case. Then the

case was fixed for the evidence of the management, who examined Shri T. D. Mishra and closed their case. Arguments were heard. I now, give my findings issues-wis:—

ISSUE NO. 1:

WW-1 stated that he had brought the sumoned record. The name of the workman does not find place in the payment vouchers of the management but his name appears in the Payment of vouchers pertaining to Ahrawat Transport System whose office is situated in the same shop in which the office of this management is situated. The workmen of the two concerns were different. Although the proprietor of both these concerns i.e., his manager and Ahrawat Transport System were the same. He further stated that he had brought cash vouchers pertaining to Ahrawat Transport System also. He also brought ledger and cash book pertaining to 1973-74 and 1974-75 belonging to Colts Engineering the respondent management. In the ledger pertaining to this management ledger of Shri Braj Nath Singh appear a page 163. WW-1 stated that he worked with this management from 1976 to 1977 as a Turner. The factory is situated in plot No. 101 Sector-6. The concerned workman also worked there as Tool Setter and Maintenance Fitter. The factory is engaged in the manufacture of Die Casting and Aluminium casting for export the work which done by the concerned workman on Die Casting Machine, Lathe Machine and power press grinders etc. Houses of work of both of them were the same. Lay of holidays and duty hours were also the same. All the workmen get their wages on vouchers. In cross examination he stated that he had no document in his possession to show his employment in the factory. His attendance was marked in the register and of the workman concerned. He admitted the signatures of the workman on Exhibits M-1 to M-27. WW-3 stated that he worked in the factory in 1972-73 as a helper. He knew the concerned workman who was in senior section. He was Fitter and Tool Setter. He did work in

the same section where he was. Shri Bhupinder Singh was the Manager of the factory who used to grant leave to all the workmen and including the concerned workman. The concerned workman was also entitled of overtime allowance like others. There was no Transport Company in the factory premises. In cross examination it was stated that he had no documentary proof of his employment. Wages were paid some times on vouchers and some times on register. I also used to receive wages on vouchers similar to Exhibit M-1 to M-27 but they used to be on receipt stamp. I do not know what was written on the vouchers. WW-4 Shri V. P. Bhatia Manager of the management stated that he had brought ledger register for the year 1974-75. This contains ledger of the concerned workman at page number 48-49. It commences from 2nd July, 1974 to 30th June, 1975. Ledger prior and after this date are in Delhi office for Income Tax purpose. He was in this factory from 1975. The workman concerned did not work there. He could not identify signatures on Ahrawat Transport vouchers. On Exhibit M-3 there may be signatures of Shri R. L. Bhatia but he had no connection with the factory. In the ledger of Shri R. L. Bhatia also. He in hand there was a ledger further stated that M/s. Ahrawat Transport is still functioning but there was no Fitter. There is no machinery in Ahrawat Transport. WW-5 the concerned workman stated that he did not know work of Automobile Industry regarding repairing, driving etc. He never worked in transport company. He knew repairing and tool setting and press machine. He never repaired the machine of Ahrawat Transport. He joined Colts Engineering on 1st November, 1969. He worked in its erection. He used to repair machines of the management. There was no other person with him for this work. First Shri Marvin and then Shri Pushpinder Sisodia was the Manager. He was paid his wages by him. He used to purchase goods concerning repairs for the management and payment was made by Shri Bhatia. Finished goods were despatched by him when no senior man was available. Exhibit WW-5/1 to

WW-5/2 were copies of gate passes and delivery challans for goods sent by him. Short leave was granted by the Manager on verbal request. Exhibit WW 5/3 was the gate pass of goods received in the factory. His services were terminated by the Manager Shri Pushpinder Sisodia. He admitted his signatures on Exhibit M-1 to M-27 but did not know its contents. In cross examination he stated that production in the factory commenced in December, 1969. He did not have technical diploma but knew the job by experience. He worked in Textile Machinery Calcutta before joining this concern. He did not know as to who filled Exhibit WW-5/1 to WW-5/3. Usually he handed over challan to the management but these papers remained with him by inadvertance. These documents were meant for the Chowkidar.

MW-1 stated that the name of the workman did not appear in the company record. The factory is situated in plot No. 36, Sector-4. In cross examination he stated that he was working in this factory for the last one year. He did not know another factory of this management was situated in plot No. 101, Sector-6. He had not brought register for the factory situated in plot No. 101. He did not know the time since the factory was working in plot No. 36. He further stated that no other company was working in this plot. He further stated that he never went to plot No. 1, Sector 6.

I have gone through the demand notice in which the workman stated that he was Tool Setter and Maintenance Fitter. In the statement of claim he also repeated the same stand. The management in the written statement took the stand that the workman was never in their employment. They did not state that he was an employee in their sister concern "Ahrawat Transport System". I have also gone through the order dated 23rd January, 1978 passed by my predecessor for production of photostate copies of document which was marked "A". There is a note that there are signatures of Shri Braj Nath Singh the concerned workman in Hindi on this document. There was a direction that

of M/s. Colts Engineering Industries, Plot No. 101, Sector 6, Faridabad.

BEFORE SHRI M. C. BHARDWAJ,
PRESIDING OFFICER,
INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD
Reference No. 136 of 1976

between

SHRI BRAJ NATH SINGH WORKMAN AND THE MANAGEMENT OF M/s. COLTS ENGINEERING INDUSTRIES, PLOT NO 101, SECTOR-6, FARIDABAD

Present:—

Shri R. C. Sharma, for the workman.

Shri H. R. Dua, for the management.

AWARD

By order No. ID/FD/794-A-96/247745, dated 22nd July, 1976 the Governor of Haryana referred the following dispute between the management of M/s. Colts Engineering Industries, Plot No. 101, Sector-6, Faridabad, and its workman Shri Braj Nath Singh to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947:—

Whether the termination of service of Shri Braj Nath Singh was justified and in order ? If not, to what relief he is entitled ?

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, following issues were framed on 6th July, 1977:—

1. Whether the workman concerned was an employee of the management ?
2. Whether the termination of services of Shri Braj Nath Singh was justified and in order ? If not, to what relief is he entitled ?

And the case was fixed for the evidence of the workman, who examined Shri Bhola Nath clerk as WW-1, Shri Gobro as WW-2, Shri Vidya Sagar as WW-3, Shri V. P. Bahal as WW-4 and himself as WW-5 and closed his case. Then the

case was fixed for the evidence of the management, who examined Shri T. D. Mishra and closed their case. Arguments were heard. I now, give my findings issues-wise:—

ISSUE NO. 1:

WW-1 stated that he had brought the summoned record. The name of the workman does not find place in the payment vouchers of the management but his name appears in the Payment of vouchers pertaining to Ahrawat Transport whose office is situated in the same shed in which the office of this management is situated. The workmen of the two concern were different. Although the proprietor of both these concerns i.e., his management and Ahrawat Transport System is the same. He further stated that he had brought cash vouchers pertaining to Ahrawat Transport System also. He had also brought ledger and cash book pertaining to 1973-74 and 1974-75 belonging to Colts Engineering the respondent management. In the ledger pertaining to this management ledger of Shri Braj Nath Singh appear a page 163. WW-2 stated that he worked with this management from 1976 to 1977 as a Turner. The factory is situated in plot No. 101 Sector-6. The concerned workman also worked there as Tool Setter and Maintenance Fitter. The factory is engaged in the manufacture of Die Casting and Aluminium casting for export the work which done by the concerned workman on Die Casting Machine, Lathe Machine and power press grinders etc. Houses of work of both of them were the same. Lay of holidays and duty hours were also the same. All the workmen get their wages on vouchers. In cross examination he stated that he had no document in his possession to show his employment in the factory. His attendance was marked in the register and so of the workman concerned. He admitted the signatures of the workman on Exhibit M-1 to M-27. WW-3 stated that he worked in the factory in 1972-73 as a helper. He knew the concerned workman who was in senior section. He was Fitter and Tool Setter. He did work in

the same section where he was. Shri Bhupinder Singh was the Manager of the factory who used to grant leave to all the workmen and including the concerned workman. The concerned workman was also entitled of over time allowance like others. There was no Transport Company in the factory premises. In cross examination he stated that he had no documentary proof of his employment. Wages were paid some times on vouchers and some times on register. I also used to receive wages on vouchers similar to Exhibit M-1 to M-27 but they used to be on revenue stamp. I do not know what was written on the vouchers. WW-4 Shri V. P. Bahal Manager of the management stated that he had brought ledger register for the year 1974-75. This contains ledger of the concerned workman at page number 48-49. It commence from 2nd July, 1974 to 30th June, 1975. Ledger prior and after this date are in Delhi office for Income Tax purpose. He was in this factory from 1975. The workman concerned did not work there. He could not identify signatures on Ahrawat Transport vouchers. On Exhibit M-3 there may be signatures of Shri R. L. Bhatia but he had no connection with the factory. In the ledger of Shri R. L. Bhatia also. He in hand there was a ledger further stated that M/s. Ahrawat Transport is still functioning but there was no Fitter. There is no machinery in Ahrawat Transport. WW-5 the concerned workman stated that he did not know work of Automobile Industry regarding repairing, driving etc. He never worked in transport company. He knew repairing and tool setting and press machine. He never repaired the machine of Ahrawat Transport. He joined Colts Engineering on 1st November 1969. He worked in its erection. He used to repairs machines of the management. There was no other person with him for this work. First Shri Marvin and then Shri Pushpinder Sisodia was the Manager. He was paid his wages by him. He used to purchase goods concerning repairs for the management and payment was made by Shri Bhatia. Finished goods were despatched by him when no senior man was available. Exhibit WW-5/1 to

WW-5/2 were copies of gate passes and delivery challans for goods sent by him. Short leave was granted by the Manager on verbal request. Exhibit WW 5/3 was the gate pass of goods received in the factory. His services were terminated by the Manager Shri Pushpinder Sisodia. He admitted his signatures on Exhibit M-1 to M-27 but did not know its contents. In cross examination he stated that production in the factory commenced in December, 1969. He did not have technical diploma but knew the job by experience. He worked in Textile Machinery Calcutta before joining this concern. He did not know as to who filled Exhibit WW-5/1 to WW-5/3. Usually he handed over challan to the management but these papers remained with him by inadvertance. These documents were meant for the Chowkidar.

MW-1 stated that the name of the workman did not appear in the company record. The factory is situated in plot No. 36, Sector-4. In cross examination he stated that he was working in this factory for the last one year. He did not know another factory of this management was situated in plot No. 101, Sector-6. He had not brought register for the factory situated in plot No. 101. He did not know the time since the factory was working in plot No. 36. He further stated that no other company was working in this plot. He further stated that he never went to plot No. 1, Sector 6.

I have gone through the demand notice in which the workman stated that he was Tool Setter and Maintenance Fitter. In the statement of claim he also repeated the same stand. The management in the written statement took the stand that the workman was never in their employment. They did not state that he was an employee in their sister concern "Ahrawat Transport System". I have also gone through the order dated 23rd January, 1978 passed by my predecessor for production of photostate copies of document which was marked "A". There is a note that there are signatures of Shri Braj Nath Singh the concerned workman in Hindi on this document. There was a direction that

the original will be produced at the time of hearing of arguments as well but they did not so produce photo copies or the original. I take inference that from this document of the management verification by Braj Nath Singh show that he was in the factory of the management. The workman concerned produced WW-1 Bhola Nath clerk of the management who admitted that the office of Ahrawat Transport is also situated under the shed in which office of the management is situated. He also admitted that the management of the two concern is the same. WW-2 and WW-3 have admitted that the workman concerned was a co-worker and engaged in duty of Fitter-cum-Tool Setter in the management concern. WW-4 Manager of the factory of the management produced ledger for the year 1974-75 and stated that the concerned workman had a ledger showing debit, credit and balance in his name, but it was for transport expenses. He further admitted that in Ahrawat Transport there was no Fitter or Maintenance section. The workman produced Exhibit WW-5/1 to WW-5/3 which are gate passes and delivery chalans of the management bearing signatures of the workman concerned in token of receipt of goods. I am of the considered opinion that the management who produced Exhibit M-1 to M-27 vouchers of payment of Ahrawat Transport System to this concerned workman have done unfair labour practice in showing him a workman of their sister concern Ahrawat Transport System without concurrence or knowledge of the concerned workman. Failure of the management to mention this fact in their written statement also supports my will. Therefore, I decide this issue in favour of the workman.

ISSUE NO 2:

As the management has failed to adduce any evidence because of their stand taken in the case and evidence of the workman discussed above, I decide this issue against the management.

Relief:

The workman according to his statement of claim joined this concern on 1st

November, 1969 and his services were terminated with effect from 23rd January, 1976. At that time he was drawing wages at the rate of Rs. 421/- p.m. The workman has made a statement that he is employed with effect from 1st April, 1978 in Super Auto India (P) Ltd. Faridabad. It will be unnecessary to make an order of reinstatement in these circumstances. But the concerned workman is entitled to full back wages and other allowances which are ordered in the form of a lump sum compensation of Rs. 12,000/- against the management.

While answering the reference, I give my award that the management shall pay a sum of Rs. 12,000/- to the workman concerned in lieu of his wages and other allowances. The workman is not entitled for reinstatement.

The 2nd December, 1980.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal,
Haryana, Faridabad.

No. 1114, dated 3rd December, 1980.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal,
Haryana, Faridabad.

No. 11(112)-80-8Lab/13289.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute

between the workmen and the management of M/s. Industrial Cables (India) Ltd., Lal Chand Nagar, Kila Zafargarh, District Jind (Haryana).

BEFORE SHRI M .C. BHARDWAJ,
PRESIDING OFFICER,
INDUSTRIAL TRIBUNAL,
HARYANA FARIDABAD.

Reference No. 28 of 1978

between

THE WORKMEN AND THE MANAGEMENT OF M/s. INDUSTRIAL CABLES (INDIA) LTD., LAL CHAND NAGAR, KILA ZAFARGARH, DISTT. JIND (HARYANA).

Present:

Shri S. N. Vats, for the workmen.
Shri C. M. Lal, for the management.

AWARD

By order No. ID/KNL/654-77/5940, dated 8th February, 1978 the Governor of Haryana referred the following dispute between the management of M/s. Industrial Cables (India) Ltd., Lal Chand Nagar, Kila Zafargarh, Distt. Jind (Haryana) and its workmen, to this Tribunal, for adjudication, in exercise of the power conferred by clause (d) of subsection (1) of section 10 of the Industrial Disputes Act, 1947:—

Whether the workmen are entitled to grant of bonus for the years 1973-74, 1974-75, 1975-76 and 1976-77 ? If so, with what details ?

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, following issues were framed on 2nd June, 1979:—

1. Whether the management is a new establishment covered under section 2 of the Payment of Bonus Act ?
2. Whether no bonus is payable under section 16 of the Payment of Bonus Act ?
3. Issue No. 2 is not proved whether the workmen are entitled for the grant of bonus for the years 1973-74, 1974-75, 1975-76 and

1976-77? If so, with what details ?

And the case was fixed for the evidence of the workmen, who examined Shri Dalbir Singh as WW-1 and Shri Suresh Chander as WW-2 and closed their case. Then the case was fixed for the evidence of the management, who examined Shri S. N. Jain Accounts Officer and closed their case. Arguments were heard. I now give my findings issueswise:—

ISSUE NO 1:

Whereas the management according to their written statement given the date of first selling of goods of the company as October, 1973. Their accounting year being November to October. In the statement of MW-1 it is stated that the respondent factory started in August, 1973 and first sale took place in October, 1973. Therefore, it is held that the management is a new establishment.

ISSUE NO 2 AND 3:

WW-1 stated that he was a workman of the management. There was another factory at Rajpura under the same management. The accounts of both the factories were one. Rajpura factory was started in 1964 and this factory at Kilazafargarh in 1970. He produced annual report for 1976-77 as Exhibit W-1 and article of association Exhibit W-2. The factory at Rajpura and Kilazafargarh were not different according to him. He further stated that the Rajpura factory was paid bonus at the rate of 20 per cent. In cross examination he stated that he had not seen the accounts of the management but he knew it that the accounts were one. He further stated that there was General Manager in his factory but he did not know whether there was another General Manager at Rajpura factory. He could not tell what was the accounting year in the company, nor he could tell when the manufactured goods of this factory went into the market. WW-2 stated that he was working in this factory since 1976. The name of the factory was Industrial Cables (India) Ltd. There was another factory at Rajpura. The management of both the factories was the same. Bank was also the same. The factory at Kilazafargarh

manufactured C.A. Wire, C.A. strips Wire, ACSR Wires, Bight Cycle Scopewire and factory at Rajpura manufactured PVC wires, 2, 3, 4 service wires. He had not seen the balance sheet of the company which may be one. The bonus was demanded on the basis of declared by Rajpura factory. The Rajpura factory came into being in 1964 and Kilazafargarh in 1969-70. In cross-examination he stated that he had never been to Rajpura factory. He could not tell who was the General Manager. He did not know the Accounting year of the management. He further stated that he did not know when the manufactured goods of the factory at Kilazafargarh first went to the market.

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units were not different. The representative for the management produced Exhibit M-6 to M-9 allocation chart for the relevant years duly prepared by the Chartered Accountant.

The representative for the workmen argued that the company was one and at Kilazafargarh factory was a part of Rajpura factory. Bonus in that factory was paid at the rat of 20%. He also cited 1966 I LLJ 497 and 1976 Lab.I.C. 1966. On the other hand the representative for the management argued that the documents produced by him were duly audited and certified Chartered Accountant and thus pertained to Kilazafargarh factory and Rajpura factory separately. He also cited section 16 of the Payment of Bonus Act and argued that the unit being separate maintaining separate balance sheet of loss bonus was not payable. He cited 1971 ILLJ page 217 supporting his plea. I have gone through the proviso to section 3 of the Payment of Bonus Act which gives powers to the management to prepare separate balance sheet for a branch or department establishment separately in which in case of loss no bonus was payable. As regards rulings cited by the representative for the workmen my attention was drawn that these rulings pertained to the period before the enactment of Payment of Bonus Act and not applicable to the present case. The balance sheets and profit and loss accounts produced by the management no doubt are showing losses and on the discussions stated above, I find that the bonus was not payable for the period in dispute. I hold accordingly.

The 27th November, 1980.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal,
Haryana, Faridabad.

No. 1077, dated 28th November, 1980.

Farwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

The 27th November, 1980.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal,
Haryana, Faridabad.